

REMARKS

Pending Claims include Claims 1-3, 5-9, 36-39 and 47-70. Claims 40-46 are withdrawn.

Canceled Claims include Claims 4 and 10-35.

The undersigned expresses appreciation for the Examiner's suggested amendment to Claim 8. Accordingly, Claim 8 is amended to depend from Claim 1, and a recited, "reinforced cementitious board," is deleted. Thereby, Claim 8 is directed to the elected subject matter. Reconsideration of Claim 8 is requested. Similarly, reconsideration is requested of Claims 9 and 36 dependent from Claim 8, and of Claim 37 dependent from Claim 36.

Claims 1, 2, 3, 7, and 39 are rejected under 35 U.S.C. §102(b) as being anticipated by Girgis et al., U.S. Patent No. 4,762,750. Claim 1 distinguishes over Girgis et al., hereafter referred to as, Girgis, as will now be discussed.

Claim 1 recites an open mesh, whereas, Girgis does not teach open mesh, but instead teaches a covered mesh 12, wherein the mesh 12 is covered by being laminated between two, polyvinyl chloride sheets 11 and 13. See Column 18, lines 29-35, of Girgis. Thus, Claim 1 recites a substantive difference over Girgis, which overcomes the rejection under 35 USC 102.

Section 5 of the Office Action states that Girgis discloses the use of a reinforcement mesh for concrete and gypsum (col. 18, lines 16-18). However, Girgis discloses concrete and gypsum reinforcement, as part of a single sentence, which states, "Such specialty products include ropes

and cordage, dryer felts, conveyor belts, reinforcement mesh for concrete and gypsum, webbing and strapping, slings, electrical sleeving and harnesses and reinforced tapes, cables for aerial dropwires, mattress ticking and fiber optic cables.” Accordingly, the single sentence, when considered as a whole, discloses simply a list of items for reinforcement by the covered mesh 12. The mesh 12 is covered by two polyvinyl chloride sheets 11 and 13. Further, the Girgis list does not disclose what distinguishes a concrete and gypsum reinforcement from other reinforcements on the Girgis list, for example, a mattress ticking reinforcement on the list. Accordingly, the Girgis disclosure, considered as a whole, suggests no features for concrete and gypsum reinforcement to distinguish from mattress ticking reinforcement.

By contrast, Applicants’ Claim 1 recites features; wherein an open mesh is adapted with the recited mesh thickness for positioning in two layers in a cementitious board (antecedent basis in Fig. 1), and adapted for avoiding spalling (antecedent basis in paragraph [0028]) while spaced from a neutral axis of flexure for resisting flexure of the cementitious board (antecedent basis in paragraph [0009]). These features and other features recited in Claim 1 clearly distinguish cementitious board reinforcement, according to the invention, from mattress ticking reinforcement. Thus, Girgis, which does not discloses any features of distinction between cement and gypsum reinforcement and mattress ticking reinforcement, can not suggest the features in Applicants’ Claim 1 that distinguish cementitious board reinforcement.

The only features disclosed by Girgis are those associated with the covered mesh 12 laminated between sheets 11 and 13. No further teaching is present to make the covered mesh an

open mesh as recited in Applicants' Claim 1. Further, no feature is disclosed by Girgis that would suggest that the features recited in Applicants' Claim 1 are obvious variations.

Claim 1 further distinguishes over Girgis for reciting an open mesh adapted for two layers in the recited cementitious board. Each layer is spaced from a neutral axis of flexure. Girgis does not teach that the covered mesh 12 is adapted for two layers. Girgis does not teach that the covered mesh 12 is spaced from a neutral axis of flexure.

Independent Claims 47 and 59 are patentable over Girgis under 35 USC 102, for the same reasons presented with regard to Claim 1. Further, Claim 59 recites a cementitious board having a thickness of about 1/4 inch to about 5/8 inch, which distinguishes the invention from Girgis.

Claim 2, separately patentable, is amended to recite a fused material where the recited strands cross one another. Antecedent basis therefor appears in Figs. 4, 6 and 7, and paragraph [0035]. Similarly, Claims 3, 48-50 and 60-62 recite a fused material, and are separately patentable. Girgis discloses cured and partially cured coatings, but does not discuss whether such coatings are fused where strands cross one another.

Claim 1 as amended recites an open mesh adapted with the recited mesh thickness for positioning in two layers in a cementitious board (antecedent basis in Fig. 1), and adapted for avoiding spalling (antecedent basis in paragraph [0028]) while spaced from a neutral axis of flexure for resisting flexure of the cementitious board (antecedent basis in paragraph [0009]). Each of Claims 7, 56 and 68, separately patentable, further defines the recited mesh thickness.

For Girgis to anticipate each of such Claims, Girgis must further anticipate the recited features of the open mesh and the mesh thickness recited in Claim 1, which Girgis can not do.

Claim 39, separately patentable, further defines the alkali resistant material that adapts the recited open mesh for embedding in cementitious board. Each of Claims 36, 37, 50, 51, 57, 58, 63, 69 and 70, separately patentable, further defines the alkali resistant material that adapts the recited open mesh for embedding in cementitious board. Girgis covers a mesh 12 with sheets 11 and 13. Further the sheets 11 and 13 cover any material that is coated on the covered mesh 12. Such material, when covered by the sheets 11 and 13, is prevented from adapting the covered mesh 12 for imbedding in cementitious board.

Claims 5, 6 and 38 are rejected under 35 USC 103(a) as being unpatentable over Girgis et al. Each of Claims 5 and 6, as well as each of Claims 52, 54, 55, 64, 66 and 67, recites more than mere optimum values of result effective variables known in the prior art. Claim 1, as in each of Claims 47 and 59, recites features of an open mesh adapted with the recited mesh thickness for positioning in two layers in a cementitious board (antecedent basis in Fig. 1), and adapted for avoiding spalling (antecedent basis in paragraph [0028]) while spaced from a neutral axis of flexure for resisting flexure of the cementitious board (antecedent basis in paragraph [0009]). The numerical values recited in Claims 5 and 6 further define the specific features recited in Claim 1. The prior art does not teach result effective variables applicable to the specific features recited in Applicants' Claim 1. Thus, the prior art contains inadequate facts for disqualifying the recited numerical values from defining patentable subject matter, since the recited numerical values further define the features recited in Applicants' Claim 1, which lack result effective

variables made known from the prior art. Similar remarks for patentability apply to each of Claims 54, 55, 64, 66 and 67.

The rejection of Claim 38 states the proposition that, a method of forming an article is not germane to the issue of patentability of the article itself; therefore, such a limitation is not given patentable weight. However, the practice of not giving patentable weight to some of the claim language is no longer available as a ground of rejection. It has been judicially ruled that all language appearing in a claim must be examined for describing differences over the prior art. Similarly, all language appearing in each of Claims 53 and 65 must be examined for describing differences over the prior art.

Further, Claim 38 depends from Claim 1. The feature of alkali resistant coatings on the strands recited in Claim 1, adapts the recited open mesh for embedding in a cementitious board. The covered mesh 12 of Girgis is covered by sheets 11 and 13. The sheets 11 and 13 cover and prevent coatings on a covered mesh 12 from adapting the covered mesh 12 for embedding in a cementitious board.

Girgis does not disclose a coating on strands as being alkali resistant. Applicants' claims can not be used to interpret Girgis for teaching alkali resistant properties. To do so would be to use hindsight reconstruction of Girgis for the purpose of rejecting the claims.

In view of the amendment herein and the Remarks supporting patentability, allowance of the application is respectfully requested. The Examiner is invited to contact the undersigned to resolve any issues to advance the application to allowance.

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Respectfully submitted,

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Gerald K. Kita
Registration No. 24,125
Duane Morris LLP
One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7396
Direct Dial: (215) 979-1853
mailto: gkkita@duanemorris.com